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Docket No.: 066396-0135 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Customer Number: 20277
Eric F. BRYAN	:	Confirmation Number: 9854
Application No.: 10/815,858	:	Group Art Unit: 2859
Filed: April 02, 2004	:	Examiner: Yaritza Guadalupe

For: SENSING STEERING AXIS INCLINATION AND CAMBER WITH AN ACCELEROMETER

RESPONSE

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Please consider the following remarks in response to the Office Communication dated November 17, 2005.

Claims 1, 3-17, and 19-23 are pending in the application. Claims 7-15 and 21-23 are withdrawn from consideration.

In the Office Action, claims 1, 3, 5, 6, 16, 17 and 19 were rejected under 35 U.S.C. § 103 as being unpatentable over previously cited U.S. Patent No. 4,138,825 (Pelta) in view of previously cited U.S. Patent 6,792,792 (Babala). Claims 4 and 20 were rejected under 35 U.S.C. § 103 as being unpatentable over Pelta in view of Babala and further in view of previously cited U.S. Patent No. 6,171,880 (Gaitan et al.). These rejections are respectfully traversed. Applicant hereby respectfully requests reconsideration and allowance of the claims in view of the following arguments.

Regarding the obviousness rejection of independent claims 1 and 16 based on Pelta and Babala, Pelta's system includes a measurement head having an inclinometer 46. The inclinometer 46 uses an included accelerometer to produce camber measurements with respect to gravity (see, Pelta at col. 6, lines 15-19 and FIG. 6(a)). Babala discloses a MEMS accelerometer. The Office Action states that it would have been obvious to one skilled in the art at the time of the invention to interpret Pelta's accelerometer as a MEMS accelerometer in view of Babala's teachings. Specifically, the Examiner contends that one skilled in the art would consider Pelta to have a MEMS accelerometer because Babala teaches that a MEMS device is one that has micro-machined mechanical components and integrated support electronics, and Pelta's accelerometer "will have 'micro-machined mechanical components' and 'integrated support electronics' in order for the measuring head (46) of the size explicitly taught, to operate properly." *See*, the Office Action at the paragraph bridging pages 3 and 4.

The Examiner is, in actuality, contending Pelta *inherently* teaches a MEMS accelerometer, as defined by Babala. In other words, the Examiner is saying Pelta's accelerometer *must have* micro-machined mechanical components and integrated support electronics, because no other such components would fit inside Pelta's measuring head 46. It is well-established the fact that a certain characteristic may be present in the prior art is not sufficient to establish the inherency of that characteristic. The alleged inherent characteristic must *necessarily* be present in the thing described in the reference. Moreover, the Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied prior art. *See*, **MPEP** §2112(IV).

In the present case, the Examiner has not met their burden of showing Pelta's device necessarily has a MEMS accelerometer, as claimed. The Examiner does not offer any support for the conclusion that "the accelerometer will have 'micro-machined mechanical components' and 'integrated support electronics' in order for the measuring head (46) of the size explicitly taught, to operate properly." The Office Action simply implies Pelta's measuring head is small. The Examiner does not point to any passage of Pelta disclosing the dimensions of its measuring head 46, even though it is contended the size is "explicitly taught". Indeed, no teaching of the size of measuring head 46 appears in Pelta. Rather, Pelta's drawings (e.g., Figs. 1 and 2) show measuring head 46 is not particularly small. Figs. 1 and 2 show measuring head 46 to be about one-third the height and length of the vehicle wheel 12 to which it is attached, and almost as deep as the wheel. Thus, there is no support for the contention that Pelta's accelerometer must be a MEMS device having micro-machined mechanical components and integrated support electronics to fit inside its measuring head 46.

Further, Pelta discloses, at col. 5:19-24, that U.S. Patent 3,892,042 (Senften) teaches an inclinometer comprising an accelerometer which can be used in its device. At col. 5:23-52 and Figs. 1, 7 and 8, Senften teaches a servo accelerometer that is not a MEMS device; i.e., does not have micro-machined mechanical components with integrated support electronics. Senften shows Pelta's accelerometer is not necessarily a MEMS device, thereby disproving the Examiner's inherency arguments.

Thus, the Examiner has not made out a ***prima facie*** case of obviousness of independent claims 1 and 16, and the rejection under §103 should be withdrawn.

Consequently, claims 1 and 16 are patentable, as are claims 3, 5, 6, 17, 18 and 19, which depend from claims 1 and 16, respectively.

Regarding the obviousness rejection of claims 4 and 20 based on Pelta, Babala and Gaitan, Gaitan in combination with Pelta and Babla does not render base claims 1 and 16 obvious.

Consequently, claims 4 and 20 are patentable.

Accordingly, it is believed that all pending claims are now in condition for allowance. Applicant therefore respectfully requests an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicant's representative at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

Michael A. Messina
Registration No. 33,424

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 MAM:llg
Facsimile: 202.756.8087
Date: February 16, 2006

Please recognize our Customer No. 20277 as our correspondence address.